XII-189 (Ja R./I-91

CRM 1387 94

(2)

APPEAL OF PRISONER

No. 1105 Name शिवप्रसाद

Father's name कार्तिकराम, साकिन- पोड़ी, थाना- कोटा

Residence जिला- बिलासपुर (म0प्र0) Age 34 वर्ष

Sentenced to आजीवन कारावास on 1/9/1994

Under Section 302 भा0द0वि0 by न्यायालय प्रथम अपिरिक्त सत्र न्यायाधीश- बिलासपुर (म0प्र0)

सत्रवाद क्र0 457/92

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all. if the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement xx

2 Date on which copy received 11/9/1994

3 Date on which Appeal sent /9/1994

4 Whether the prisoner wishes to be represented or not.

No. 1105 Name शिवप्रसाद आ0 कार्तिकराम- सतनामी

Confined in केन्द्रीय जेल Jail रायपुर (म0प्र0)

No. 1516 /विधि/ 94 Dated 16/9/1994 199

Forwarded to the अतिरिक्त पंजीयक महोदय माननीय उच्च न्यायालय मध्यप्रदेश, जबलपुर (म0प्र0)

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

संलग्न :- सत्र प्रकरण क्र0 457/92 की मूल निर्णय प्रति।

Superintendent
केन्द्रीय जेल रायपुर (छ. ग.)

Date of receipt in Office

Date of receipt of record to accompany the

Memo of Appeal to the Appellate court

No. Dated 199

Forwarded to the

High Court of Madhya Pradesh
JABALPUR
28 SEP 1994
Dy. No. 846
Deputy Clerk
Jabalpur

Date of receipt in Appellate court

[P. T. O.]

RAJESH KUMAR SONTEKE
Digitally signed by RAJESH KUMAR SONTEKE
Date: 2025.02.06 12:40:46 +0530
CF0000057659
Division Bench (Criminal)

(31)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...Cr.A...NO..1387../94 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench:-

Hon'ble Shri L.C. Bhadoo and
Hon'ble Shri Dhirendra Mishra, JJ.

18-1-2006

Shri J.A. Lohani, counsel for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor for the State/ respondent.

Oral judgment dictated on *Dais.*

PER L.C. BHADOO, J:-

By this appeal under Section 374 (2) of the Cr.P.C. the accused/appellant has questioned the legality of the judgment of conviction and order of sentence dated 1-9-1994 passed by the 1st Additional Sessions Judge, Bilaspur in S.T. No.457/92 whereby learned Additional Sessions Judge after holding the accused/ appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life.

The case of the prosecution, in brief, is that PW-3 Manohar Lal lodged the report Ex.-P/6 in the Police Station Kota to the effect that 'today at about 6 p.m. he was watching T.V. in the house of Amritlal where his daughter came and informed that there is urgent work at the residence, therefore, he should come to the

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

residence. He accompanied his daughter to his residence and saw that his brother-in-law accused Shiv Prasad was standing in front of his house having Tabbal stained with blood in his hand. His upper under garments and Towel were stained with blood. The daughter of accused Taran Bai, son Devi Prasad and two other daughters were also with him. The accused informed him that today at about 4 p.m. he has murdered his wife Mongra Bai with the Tabbal. After locking the house, he has come along with children to leave them at his residence. In order to ascertain the correctness of the statement made by Shiv Prasad, he enquired from the daughter of Shiv Prasad namely Taran Bai. On enquiry, she stated that it is correct that father has murdered the mother with Tabbal. On this, he took him to the house of Kotwar Ganesh Das leaving the children of the accused at his residence. The accused disclosed the fact of committing murder of Mongra Bai to the Kotwar also.' On receiving the report (Ex.-P/6), the S.H.O. registered the case for commission of offence under Section 302 of the I.P.C., proceeded to the scene of occurrence, after giving notice (Ex.-P/9) to the Panchas, prepared Panchanama (Ex.-P/10) of the dead body of the deceased. He also prepared site plan (Ex.-P/11) of the place of occurrence. The merg intimation (Ex.-P/12) was recorded. Patwari PW-10 prepared the site plan Ex.-P/13. The weapon of offence i.e. Tabbal, one Towel stained

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

with blood and one upper under garments stained with blood were taken into possession under Ex.-P/8. The blood stained soil and plain soil were taken into possession from the place of occurrence. The dead body of deceased Mongra Bai was sent for postmortem examination to the Primary Health Centre, Kota where Dr. S.K. Verma (PW-1) conducted postmortem on the dead body of deceased Mongra Bai and prepared postmortem report Ex.-P/1. He also examined the weapon of offence i.e. Tabbal and gave the report Ex.-P/2.

After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Bilaspur who in turn committed the case to the Sessions Judge, Bilaspur from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused/appellant examined 10 witnesses. The statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime. The accused also produced one defence witness namely Taran Bai (DW-1). Learned Additional Sessions Judge after hearing arguments of the Public Prosecutor

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

and counsel for the accused, convicted and sentenced the accused as mentioned in para-1 of this judgment.

We have heard Shri J.A. Lohani, learned counsel for the accused/appellant and Shri U.N.S. Deo, Additional Public Prosecutor for the State/respondent.

The homicidal death of the deceased is not in dispute.

As far as involvement of the accused/appellant in committing murder of his wife Mongra Bai is concerned, same is based on the extra judicial confession made by the accused before PW-3 Manohar who is brother-in-law, PW-5 Ram Khilawan, PW-6 Bhuvanlal, PW-7 Bajarheen Bai, who is sister and PW-8 Keshar Bai whose house is in front of the house of the accused, who saw the accused coming out of the house with weapon of offence i.e. Tabbal and she was informed by Taran Bai, daughter of the accused, that the accused has committed murder of her mother, and the recovery of weapon of offence stained with blood.

As far as question of making extra judicial confession before the above witnesses is concerned, in order to rest conviction based on the extra judicial confession, the settled law is that the extra judicial confession must be voluntary, true and prompt. PW-3 Manohar who is none else than the brother-in-law of the accused has stated that on the fateful day, in the evening, the accused along with

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —S—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

his children came to his house at Navagaon and the accused stated that he has committed murder of his wife Mongra Bai, upon which he took the accused to Kotwar Ganesh Das from where they took him to the police station along with weapon of offence i.e. Tabbal. He also stated that the accused was carrying Tabbal stained with blood. Thereafter, they went to the police station and he lodged the report Ex.-P/6, from where he along with the police went to the place of occurrence where they saw that the body of the deceased was lying in the house. PW-5 Ram Khilawan resident of village Navagaon has stated that on the fateful day he was sitting near the house of Manohar along with other persons on the Chabutara. Shatrughan and Bhuvan were also there. Shiv Prasad came along with his 4 children carrying Tabbal in his hand and made extra judicial confession before them that he has murdered his wife. Similar is the evidence of PW-6 Bhuvanial and PW-7 Bajarheen Bai who is the sister of the accused. PW-7 also stated that the accused came along with 4 children and informed her that he has murdered his wife. In the cross-examination of these witnesses, the defence has not been able to elicit any fact to discard the evidence or make the evidence of these witnesses untrustworthy or unreliable. Manohar and Bajarheen Bai are the close relative of the accused and there was no occasion for them to implicate the accused in a false case. Even sheiter was

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

given by these relatives to the children of the accused. Immediately the accused was taken to the police station by PW-3 Manohar and Kotwar Ganesh Das where blood stained Tabbal was taken into possession by the police. Therefore, we are convinced that the extra judicial confession made by the accused before these witnesses was true, voluntary and prompt. There is no reason to disbelieve the said extra judicial confession made by the accused. Even the extra judicial confession lends support from the evidence of PW-8 Keshar Bai whose house exists in front of the house of the accused. Just after committing murder of his wife, daughter of the accused Taran Bai came outside the house and informed this lady that her father has murdered her mother. At that time, the accused came out of the house carrying Tabbal stained with blood, locked the house and left for Navagaon. The evidence of this witness is admissible under Section 6 of the Evidence Act which says that 'facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.'

The fact of extra judicial confession further lends support from the recovery of Tabbal under Ex.-P/8 and that Tabbal was examined by Dr. S.K. Verma (PW-1) who has stated that on 21-10-92 Tabbal in question was shown to him and he saw that Tabbal was

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

stained with blood. Injury No.4 found on the body of the deceased could have been caused by Tabbal in question. His report is Ex.-P/2.

Therefore, in view of the above evidence, we are convinced that the accused was the author of the crime in question. We do not find any illegality or infirmity in the judgment of the trial Court convicting the accused/appellant for commission of murder of his wife Mongra Bai.

In the result, the appeal of the accused/appellant being devoid of any merit, is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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